



To the Worshipful *Clegg*
Robert Cunliffe, Esquire,
Mayor of Liverpool.

May 1. 1759.

Worshipful Sir,

I HOPE you will neither be surpriz'd at, nor offended with me, for introducing a Letter to the Burgesſes, preceded by an Address to yourſelf; whereby to aſſure you, That if Mr. Town-Clerk would have given his Promiſe to do what I requeſted in a Letter which I ſent to him the 23d Inſtant, it would have prevented this Application.

His refusal, and the manner of his doing it, might perhaps be intended to ſhew his ſtrong Inclination that he and I ſhould become entire Strangers to each other; but I am too ſenſible of the neceſſity of making Applications to him, upon ſome Occaſions, that he muſt not imagine he can ſhake me off all on a ſudden.

On this Occaſion I conſider myſelf a Solicitor for your Worſhip and the Gentlemen of the Council; be-
cauſe

cause I well know the Contents of what I am desirous he should (as his bounden Duty) communicate to you and them. By his Means you may derive Knowledge from the great Spring ; what I have I consider as only the overflowings, and may not be quite pure, yet be thought palatable enough to those Burgeses who are not so immediately within the Circle of Power as the Gentlemen of the Council.

Whatever you, worshipful Sir, with my Brethren, may think of me, I cannot say ; but if I had not been very well advised as to our Constitution, I would not have so sanguinely expressed myself : And I can say as much with respect to the Validity of the Protest.

And I crave leave to assure your Worship, that no step will be taken by the Burgeses which may affect yourself, without giving you very fair and timely Notice ; nor is there any Opinion which I have in my Custody, but is at your service to peruse, if you please to require it.

The several Prosecutions I have made mention of must appear in a bad Light, when the Advice to have them carried on is known to come from the Person who has the Case and Opinion in his own Custody.

The Prosecution which has been carried on against Mr. Samuel Smith, has been attended with such Circumstances as must reproach those, and make them appear vile and odious, who were the Contrivers and Promoters of it ; and to lay it on some Gentlemen who were upon the Grand Jury at the time the Bill of Indictment was found against him, is casting a Stain upon them, which ill became the mention of in a public Court, and calls upon them to do themselves Justice ; besides

besides treating an old Freeman, whose universally-known good Character and Reputation may not be injured; yet its treating him with such Severity as is highly deserving of just Resentment.

When your Worship sees the Case and Opinion which Mr. Town-Clerk has, you will find that an Opinion previous to it was taken, so that one Opinion has been far from clashing with another, which is but too often the Case.

The Butcher's Cause depending upon a Bill of Indictment appears with no good Grace, to hang so long in the Court without bringing it to a hearing: The Town-Clerk knows, and you Sir will know when you see the Opinion, that Proceedings are wrong; therefore ungenerous, and beneath Character to oblige a Man in his own defence to be at the Charge he must necessarily be put to, in order to resist that Power, the exercise of which we cannot justify.

As Gentlemen are come down to view the defenceless state of the Town and Port, in order to have it secured from the danger of a Common Enemy, it has led me to consider the situation of the Free Burgesses in their Incorporated Capacity. Imagination figures out to me, The Mayor, Bailiffs and Common Council as being immur'd in a Fortification which they have long been in possession of, to the great Prejudice of the Burgesses Rights and Privileges, whose Batteries have been looked upon as very justly planted, but not within the reach of Point-Blank: This has occasioned their laying closer Siege; and as they found it convenient and necessary, have been adding other Batteries, which for
Distinction

~~Distinction~~—~~fake~~ I chuse to give Names to—The first of which I call the *Protest Battery*, erected in 1757, which seems to have demolished the Road to the Military Chest, and render'd it unpassable. The *Prisage Battery* the Gentlemen of the Council have surrender'd to the Burgesses, as being no longer tenable; and they entertain Hopes that the *Statute of Limitation Battery* will not hold out long. They are now come to the Knowledge of a large Breach in the Wall or Bulwark of Arbitrary Power (thought to be irreparable) which I crave leave to call *the Case of the Mayor, Bailiffs and Common Council, with the Opinion of Serjeant Bel-field upon it*—This has been several Years concealed from the Knowledge of either the Besiegers or Besieged, by the Skill and Artifice of the Council's principal Engineer, the Town Clerk; and thereby occasioned a great stock of Ammunition being spent, which might have been justly spared. However, it is hoped that Hostilities (which have hitherto been carried on with great Detour, except some Indecencies which the said Engineer has been guilty of, and which he has been well flogg'd for in his Majesty's Court of King's-Bench) will soon cease; and that Terms just and commendable in themselves will amicably close depending Differences; and that future Measures will be conducted with that harmonious Reputation which must, and I dare say is, the Desire of every honest Burgess. I am,

Worshipful Sir,
Your most obedient humble Servant,

JOSEPH CLEGG.

FREEBURGESSES

OF THE

Corporation of LIVERPOOL

GENTLEMEN,

STATEING Cases, which relate to Matters of Importance, and more especially such as require a Variety of Circumstances to be taken in, demand the skill of a judicious Person, dispossessed of partial Attachments of any kind: One that considers himself so much disinterested, as to entertain no other desire but That which is strictly true, right and just, should be the Determination of the Counsellor or Counsellors before whom such Case happens to be laid.

For my own Part, altho' I have repeatedly declared it to be my desire, that what is right relating to the Concerns of this our incorporated Society should take place and be adhered to; yet, I am not vain enough to imagine I should be thought to stand clear of a partial Attachment, tho' I should be weak enough to say, I hold the Standard of Impartiality. Therefore, waving any Professions of such Kind, I only presume upon offering some loose Hints to your Notice, which I have accidentally picked up; some from Letters which I have received, and which are now in my Custody; and some by Way of Oral Tradition. However I'll attempt to range them after such a Manner as to call them a Case; and I beg leave to address them to the Notice of the Town-Clerk, to compare with a Case

JOSEPH CLEGG

which he may possibly remember was drawn up by an Order of Council, and sent up to be laid before a Gentleman, who was looked upon to be a sound Man respecting his Knowledge of Corporation Affairs: And, I dare say, Mr. *William Walling*, a Solicitor in *London*, and who the Town-Clerk transacts business with, will acknowledge, that he had the Case sent him; that he had the Opinion of Serjeant *Belfield*, (who was the Recorder of *Exeter*) upon it, and that it was afterwards sent down to Mr. Town-Clerk.

Now, Gentlemen, This is the Case and Opinion which I desire may be looked upon as a Touch-Stone, whereby to bring Constitutional Right to the Test; and if my Scraps prove not to be materially contradicted by the Serjeant's solid Reasoning, then I will venture to produce another Opinion, upon which the Charters of King *Charles the First* and King *William the Third* is principally grounded.

For Form sake I will now call what I offer, *The Case of the Corporation of LIVERPOOL*, relative to their Power of making Bye-Laws, and bringing Actions against Persons not Free in the said Town, for keeping open Shops, &c.

It is well known the Corporation of *Liverpool* in the County of *Lancaster* is a very ancient Borough, enjoying some prescriptive Rights, and some by being incorporated by several Charters, now rendered obsolete or useless by that of the second Year of King *Charles the First*, bearing date the fourth Day of *July*. By this Charter the Mayor, Bailiffs, and Burgesses for the time being, or the major Part of them, (the Mayor and one Bailiff being two of them) after a public Summons, are invested with a Power to meet, and make Bye-Laws for the good Government of the Town.

By a confirmation Charter, dated the fourteenth Day of *October*, in the seventh Year of the Reign of King *William the Third*, all the Rights contained in the Charter of King *Charles the First*, abovementioned, are confirmed; and it is further declared, That for the future good Government of the Town, there should be a Common Council, consisting of forty-one of the

the Burgesſes; out of which forty-one, one ſhould be choſen Mayor yearly, and two out of the ſaid Number ſhould be choſen Bailiffs: And the Charter gives a Power to a Majority of the Council (the Mayor and one Bailiff being two) to do, ordain, execute and perform all thoſe things: So that by this Charter there is no Power for making Bye-Laws, unleſs the Words do, ordain, execute and perform will be deemed to amount to one.

For ſeveral Years paſt, many Perſons (not being Free of this Corporation) have preſumed upon the Liberty of ſetting up and occupying Trades and keeping open Shops, againſt the ancient Cuſtoms; and in order to prevent and reſtrain this Liberty, a Bye-Law was made; but it does not appear to be made by the Mayor Bailiffs and Burgeſſes; for it is not ſaid that the Mayor and one Bailiff were then preſent; for want of which Words, and other Requirements, the Corporation are adviſed the Bye-Law is bad.

It is likewise doubted (*but no Occaſion, as there is no room left for it*) whether the Common Council have a Right to make Bye-Laws, or whether ſuch Bye-Laws ought not to be made by the Mayor, Bailiffs and Burgeſſes at large: If ſo, it will be impoſſible to make a new Bye-Law; for tho' the Mayor, Bailiffs and Common Council would gladly make a new Bye-Law (*this I verily believe to be true*) or do any Act in their Power to redreſs this Grievance (*and it has been unſucceſſfully attempted by proceeding illegally*) yet, if they are forced to let in the whole Body of the Burgeſſes, there are by much the greater Number of them, who would ſide with the Non-Freemen, and not conſent to the making ſuch Bye-Law. That is, They would not give to the Council an irrevocable Power; nor ſhould the Council be deſirous to accept of it; becauſe they would be thereby making a Sacrifice of the Rights and Privileges of their Poſterity, for the ſake of engroſſing the exerciſe of arbitrary Power to themſelves for the Preſent.)

The Counſellor is deſired to conſider the Two Charters, and give his Opinion, whether the Bye-Law already made is good or

or not ; and if bad, how it must be new made ; and whether by the Common Council, or by the Burgesſes in Large ? *They think the ſeveral Queries contained in this Paragraph are ſhort of being complete, by the want of another ſhort Queſtion ; viz. Whether thoſe who ſtated them may not be thought deſtitute both of Prudence and Common Senſe ?*

The Gentleman is further deſired to peruſe the Declaration, and adviſe whether that General Action would lye ; or whether it muſt be an Action of Debt on the Charters and Bye-Law, for the Penalty mentioned in that Bye-Law ?

The Answer to the State of the Caſe Acknowledges a peruſal of both Charters, and a Declaration of the Mayor, Bailiffs and Burgeſſes, againſt *John Fazakerly*, and of a Bye-Law made or intended to be made, to exclude Foreigners from exerciſing their Trades in Town.

As to the Declaration, he conceives it is not good, but demurrable, and cannot be helped by any Amendments ; nor the Practices of Foreigners exerciſing Trades contrary to cuſtom be ſuppreſſed otherways, than by a proper Bye-Law.

As to the Charters, the Power of making Bye-Laws given to the Corporation by King *Charles* the Firſt's Charter, is given to the Mayor, Bailiffs, and Burgeſſes in General, and ſo, is no more than what the Law has given them without any ſuch Clauſe inſerted therein ; that power being incident to all Corporations. And the Charter of King *William* does not extend to give the Mayor, Bailiffs and Burgeſſes, or any Twenty-five of them, (the Mayor and one Bailiff being two) Power to make Bye-Laws ; but it is to do all thoſe Things, as the Forty-one of the Council may do by that Charter ; and there is no Power given them by that Charter to make Bye-Laws.

As to the Bye-Laws, it's built on a proper Foundation, viz. That of Cuſtom Immemorial to exclude Foreigners, for Cuſtom in that reſpect, is ſtronger than any Royal Grant by Charter, and as the Cuſtom is founded in the Preſcription Corporate Body, without giving them any Special Power of making Bye-Laws by a Select Number, and deſcription of particular Members of

that Body, which might have been done by the last Charter; (*but Note, Last Charter, does not refer to the clandestinely obtained Charter in 1751, the opinion was had before that Time*) or may be by any future Charter; (*That is, if ever the Burgesſes ſhould be Fools enough to become Aſſes for the Common-Council to ride upon*) I do not ſee how a good Bye-Law can be made other-ways, than by the Mayor, Bailiffs, Common-Council and Burgeſſes, upon a Previous public Notice of an Aſſembly to make Bye-Laws for the good Government of the Town and Burrough; which Aſſembly ought to be open for the Freemen of the Town to meet, and give their Aſſent and Conſent to what a Majority ſhall think proper and prudent.

Gentlemen, Pleaſe to conſider that what I now offer to your Notice, I do not deliver with the Stamp of *verbatim eſt*; but pleaſe to accept it as a Collection of hints picked up from ſundry Perſons at ſundry Times, and I ſhould be well pleaſed if I could have liſted Mr. Town-Clerk into the Claſs, as he has had the Original to which they refer, ſeveral Years in his cuſtody, without having laid it before the Council to my Knowledge or Remembrance.

Conſider I pray, what could be the end and view of the Council, by giving orders for the Caſe being ſtated, and an opinion had upon what ſo materially concerned the Inter-eſt of the Burgeſſes, is not to have it laid before them? Have not Encroachments been made upon the Burgeſſes Rights theſe Ten Years, both very ſenſibly and very feelingly? From October 1748, to October 1749, Fines voted for Freedom amounted to upwards of Six Hundred Pounds; ſince that Time I cannot pretend to ſay how much they will amount to, but in my opinion the Money paid ſince on that Account, will not amount to ſo much.

What can be ſaid for aſſuring the Shoemakers in 1755, that if they would carry on a Proſecution againſt a Perſon uſeing and exerciſing the Faculty of a Free-Burgeſs, who was not Free, the Public Eſtate ſhould pay the Expence? Was there not ſince that Time an order made for carrying on a Proſecution againſt one *Whitfield*, upon the Application of two Gentlemen, on be-

half of, and the request of several in the Millinary way? Was
 not an Action taken out against him by the Town-Clerk as Sol-
 licitor in that Affair? And when what was necessary to be fur-
 ther done in order to bring it on to a Tryal, did he not let one or
 both of those Gentlemen know there was nothing could be done?
 These are Transactions with a great Number of Promises and
 Assurances of the like Kind made to you by means of Mr. Town-
 Clerk, as the Mouth and Oracle of the Gentlemen of the Common-
 Council. There is an Indictment against a Butcher now depend-
 ing in the Court which indeed may answer an End, to put him
 to Expence; but for a Town-Clerk to have the Case and Op-
 inion in his own keeping secreted, and at the same Time to be
 the Promoter of such Work as I have now mention'd, what can
 People (the most free from Prejudice) judge of such Conduct?
 And here permit me to recite part of a Letter, the Direction of
 which is, *To the Worthy Burgesses of the Corporation of Liverpool,*
 printed in *October 1754*, with design to be published, upon an Ap-
 prehension, that Alderman *Charles Goore* would be opposed as a
 Candidate for the Office of Mayor; but when it was known
 otherways, the Letter was secreted; however one falling into
 my Hands, I published it, as I did the Council's Petition for a
 New Charter, expecting thereby to have the Power of making
 Bye-Laws vested in the Common-Council only; and after ex-
 cusing for the great secrecy in the manner of applying, say,
 ' And Gentlemen, The Reason why this Application was not
 ' made Public at the Time it was in Agitation, was, that they
 ' could not consistent with their Duty, as *Guardians and Trus-*
 ' *tees* of the Public Estate, discover it to your Enemies and Op-
 ' ponents, by whom we mean those Foreigners who were inva-
 ' ding your Rights, by following their Trades in Town, and
 ' others, who were attempting and threatening to take part of
 ' your Public Estates from you! and we repeat it again, that
 ' for Those, and only those good and just Ends was the Petition
 ' preferred, which Premises you are desired impartially and
 ' coolly to Consider, being ordered to be laid before you for such
 ' Purpose, by, Gentlemen, your very humble Servants, Fellow
 ' Burgesses

Burgesses, and Real Friends. The Mayor, Bailiffs, and Majority of the said Common-Council of the Corporation of Liverpool.

These are glorious displays of Friendship and Integrity; this is Guardianship and Protection of your Rights, which cannot fail to make a deep and lasting Impressions on your Minds, especially when you consider that the Case and Opinion to which I refer you, and which has been bought and paid for with the Public's Money, has been since the Year 1749 concealed from you by the Town-Clerk, not only so, but from the Common-Council likewise.

In Alderman Hughes's Mayoralty you may remember there was a Solemn Conference held, between five Gentlemen of, and five that were not of the Council, at which, I am well Informed, (not being permitted to be one of the number) that with much intreaty they were permitted to hear a long Case read to them, drawn up as I remember with Great Partiality in favour of Aliens, (no remedy contained in the concealed Case and Opinion to favour the Burgesses so much as hinted at) But, as an Opinion depends upon the State of a Case, the Partial Case and Opinion seemed to Tally very well. As the declared end and design of this Conference, was to be Satisfied how the Burgesses Rights stood, I think the Old Serjeant's Opinion should have made it's Appearance; I am perswaded to believe that if it had been laid before the Council as it ought to have been when received; depending differences would have been long since settled; and in all probabillity after an Amicable manner; and even prevented a Dispute between the Recorder and Mr. Pole, who shall pay or rather not pay the 498 l. 9 s. the Prizage Ballance, with the Interest, so long as it is detained from being apply'd to the Public's use; and it is not quiet Improbable but the 269 l. now so strongly Immured by a Statute of Limitation, might have broke Stitches, and been likewise brought into the Common Fund; If this Case and Opinion can but be produced, or at least the Worshipful Mr. Mayor be by the Town Clerk permitted to have the perusal of it, before the

approaching Term comes on, I am in hopes it may prevent Notices being given to some Gentlemen, and thereby excuse their Appearance in that Court in which the Town-Clerk's Law has been well Curry-comb'd.

For my own part, I cannot think otherways than that it would be better for him to shuffle off, and avoid taking Opinions, [as has been done about the Money owing by the Corporation to the Poor!] than put the Public to the Expence of having them procured, only for the sake of his pocketing them: However, as it is now certainly known there is one, if the Worshipful the Mayor and Council can prevail to have a Sight of it, they will I hope be satisfied that there is a way, and only one way, to have our Constitutional Concerns properly managed and Conducted.

The Common Council as such are not Liabie to be called upon, if a Common-Hall is not Summoned: That business rests upon the Worshipful the Mayor only; but one Bailiff must with him attend the meeting. I have applied to the Town Clerk to lay the Case and Opinion had from Serjeant *Belfield* before Mr. Mayor, and Council; and as he has not thought proper to promise he will do it, I subjoin to this the Copy of my letter to him, whereby I hope it will appear I have said nothing with a view to Ruffle, but to invite him to do what I apprehend is his Duty, and at the same time to Justify myself in handing the Substance of the Case and Opinion to your notice, hoping you consider yourselves Intrested in it; and the few remarks which I have here and there intermixed, you will find by a different Type, being put in *Italicks*.

To Mr. Francis Gildart, Town-Clerk.

SIR,

I send this by my Son, to whom I have shewn the Contents, that he may deliver it with his own Hands to you, and receive an Answer, Whether you will please to recommend it to the worshipful Mr. Mayor to hold a Council

Certain on the first Wednesday in May; and that you
 will please to lay before him the Case, with Serjeant Bol-
 field's Opinion upon it; that it may be then shewn to the
 Gentlemen in Council assembled, to have their Determina-
 tion whether a Common-Hall Meeting must take place;
 for that will determine the Burgesses in the pursuit of their
 Measures, not to slip the Term. However I may think
 the Treatment I have met with severe, it will not influence
 me on the one Hand to behave undutiful to his Worship as
 a Magistrate, nor on the other Hand slacken my Endeavours
 to procure the establishment of the Burgesses Rights,
 so far as lies in my Power. I need not advance Arguments
 to inform your Judgment, because I am fully satisfied you
 know Matters cannot be constitutionally conducted with-
 out a Convention of the Mayor, Bailiffs, and Burgesses.
 I am convinced likewise, there is but one way to bring
 Affairs into a proper Method of direction to answer a good
 End. The Sponge is a better Remedy to rectify some Mis-
 takes than the Law. I need not enlarge further, than to
 say, I am, Sir,

Your humble Servant,

April 23, 1759.

Joseph Clegg.

Mr. Town-Clerk's Reply was, That he would not return
 me an Answer, nor would he have read my Letter but that it
 was handed to him by my Son, who deliver'd it open, and at
 my Request required an Answer whether he would comply
 to what was therein proposed; and further told him, that he
 would see him, to receive his Answer, the Day following,
 which he accordingly did; so that it cannot be said but that
 he had *reasonable Notice*, and Time to consider, deliberately,
 whether he would dart out a Ray of honest Prudence, by
 confessing Judgment, or continue in his old beaten Track by
 obdurate Judgment. If he had engaged fairly and openly to do what
 my Letter required, this should not have made its public Ap-
 pearance

pearance; but as he has not done so, I submit it to public Perusal, with my desire you will take it into Consideration, whether his concealing this important Case and Opinion, is not a Breach of his Public Trust, as well as a great abuse put upon the Gentlemen of the Common-Council? How should they come at the Knowledge of what is really and truly the Constitution, if they must be kept Strangers to Opinions of so much Consequence? If there was no occasion for an Opinion, why was it applied for, and to a Gentleman known to be a Person of sound Knowledge and Judgment in Corporation Concerns.

As to Mr. Town-Clerk's Honour and Honesty, I say nothing, being contented they lye snug in the Corner of his own hiding Place: And I desire you will consider further, whether this same Case of his own Stating, or procuring to be stated, and the Opinion upon it, of his own concealing, do not furnish ample Stock of Matter to lay before his Majesty's Court of King's Bench, in order to procure a sovereign healing Remedy for a sick Corporation? Can this sort of Conduct be considered of in any other Light, than as intended to give secret Stabs to the very Heart of our Constitution, like as his venerable old Father by a Letter of his, which I some time since published, did to the Prizage Revenue.

Please likewise to let it be noticed, whether by Mr. Town-Clerk's means, with other secret Assistance, strong Prejudices have not taken hold of the Gentlemen of the Council against me, which it has been my earnest desire to eradicate, by Methods I have taken previous to Publications: I have given Hints to them of Opinions being received, but concealed from their Knowledge; they have not required me to explain myself; therefore could entertain no hopes of having a Regard paid to them. Nay! it has been declared, that whatever I said or wrote should not be attended to: And you know how much what I have said and wrote about the Prizage Account has been exploded; yet, after all, the Council's Conviction of the Truth of my Assertions, has caused an Order being made for the Money to be brought to the Credit of the Public

Publick Estate, or the Detainer of it to have a Prosecution commenced against him. The subject Matter of this Publication is of the highest Importance to you as an incorporated Society. The Case, as it is stated, is an ample Confession of the Council's Measures being wrong; and the Opinion upon it carries convincing Proof in every Line that we are so. It is an Opinion of an uncommon sort. It is no way larded with Doubts or Suppositions, but clear, strong and rational; and that it is so, is not to be wondered at; because the Case of *Exeter*, of which Corporation he was Recorder, was in a great Measure parallel to ours, as I have been informed.

The Common Council, both by the Petition which was presented to his Majesty in 1751, and by the Case I am now referring to, do fully and clearly acknowledge, that the Mayor, Bailiffs and Common Council have no Power to make Bye-Laws: And it is now plain, that without a Bye-Law, we have no Power to raise Money. Then how can we do that Justice to the Publick, which they have a Right to demand from us, unless we pursue such Measures as we can fairly justify? I am not upon a trifling Subject, however weak my Arguments may appear in support of my own Allegations. I therefore leave these my free Sentiments to your deliberate Consideration who are entrusted with the Affairs to which they relate, along with,

GENTLEMEN,

Your Humble Servant,

Liverpool, April 25, 1759.

JOSEPH CLEGG



ERRATUM.

Page 1, line 6, for 23d Instant, read 23d Uth.

JOSEPH CLEGG

